

REMARKS

This responds to the Office Action dated October 25, 2005. Claims 1 and 29 are amended. No claims are canceled. Claims 43-54 are added. As a result, claims 1-16, 29-42, and 43-54 are now pending in this patent application.

Finality of the Rejection

Applicant respectfully objects to the finality of the present Office Action, mailed on October 25, 2005. The Office Action alleges that “Applicant’s amendment necessitated the new ground(s) of rejection,” as its reason for making the Office Action final. (See Office Action at 3.) However, a careful review of Applicant’s previous response, mailed August 1, 2005, indicates that the only claim amendments were to claims 1 and 29 to change “correlative” to “obtain.” Applicant respectfully submits that such minor amendments could hardly provide the stated basis for the new ground(s) of rejection, particularly where these new rejections relied upon Carlson et al. (U.S. Patent No. 5,792,195) and Spinelli (U.S. Patent No. 5,235,976), both of which were previously cited to the Examiner by the Applicant in the Information Disclosure Statement mailed on February 4, 2002, and both of which are in fact specifically discussed in the specification of the present patent application. (See Application at page 3, line 18 and page 13, line 13.) Applicant respectfully submits that there is no apparent reason why the Office Action’s “new” ground of rejection could not have been previously asserted. Applicant respectfully submits that by first asserting this “new” ground of rejection in a Final Office Action, Applicant has been left without a full and fair opportunity to respond to this basis of rejection. Accordingly, Applicant respectfully requests withdrawal of the finality of the present Office Action, and respectfully reserves the right to further petition the same.

§102 Rejection of the Claims

1. Claims 1-5, 9-11, 16, 29-33 and 37-39 were rejected under 35 U.S.C. § 102(b) as being anticipated by Carlson et al. (U.S. Patent No. 5,792,195). Applicant respectfully traverses.

The Office Action takes the position that the claimed “maximal atrial tracking rate” should be interpreted as the “maximal hemodynamic rate” in Carlson et al. (See Office Action at 2.) In taking this position, the Office Action explains that this is because “no atrial sensing is

performed in the claim.” (*See id.*) Without addressing the merits of whether the claimed “maximal atrial tracking rate” can reasonably be interpreted by one of ordinary skill in the art as the “maximal hemodynamic rate” in Carlson et al., Applicant has amended claims 1 and 29 to recite “detecting one or more atrial depolarizations” and “providing ventricular pacing, in response to one or more of the sensed atrial depolarizations, at a ventricular pacing rate that is limited by the maximum atrial tracking rate.” With this clarification, Applicant respectfully submits that this rejection has been overcome. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of claims 1 and 29 and their respective dependent claims.

2. Claims 1 and 15 were rejected under 35 U.S.C. § 102(b) as being anticipated by Spinelli (U.S. Patent No. 5,235,976). Applicant respectfully traverses. The Office Action makes clear that the rejection using Spinelli is made on a similar basis to that using Carlson et al, as addressed above. Therefore, Applicant respectfully traverses this rejection for the reasons discussed above with respect to the rejection using Carlson et al. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

Allowable Subject Matter and New Claims

Claims 6-8, 12-14, 34-36 and 40-42 were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Accordingly, Applicant is presenting new claims 43-50, which substantially corresponding to previously-presented claims 7-8, 12-13, 35-36, and 40-41.

Applicant notes, however, that new claim 45 is being presented as previously-submitted claim 12 without including the subject matter of intervening claim 11. Similarly, new claim 49 is being presented as previously-submitted claim 40 without including the subject matter of intervening claim 39. Nonetheless, Applicant believes that such new claims 45 and 49 incorporate the spirit of what the Examiner indicated to be allowable.

In sum, Applicant respectfully requests allowance of new claims 43-50.

Regarding new claims 51-54, Applicant respectfully submits that such claims are similar to previously submitted claims 11-12 and 39-40. Although the Office Action has interpreted pacing as a tachyarrhythmia therapy (see Office Action at 2), Applicant cannot find any

disclosure in the cited portions of Carlson et al. of detecting a tachyarrhythmia, or any other mention of tachyarrhythmia. Accordingly, Applicant respectfully requests allowance of new claims 51-54.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

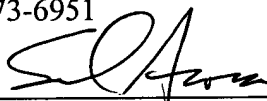
Respectfully submitted,

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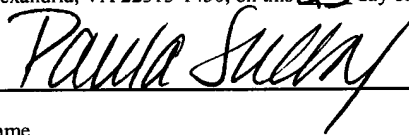
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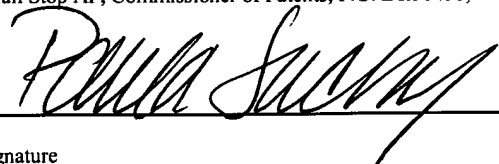
By 

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 23 day of December, 2005.


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